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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1622-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

HANIF HOPSON,

Defendant-Appellant.

Submitted February 28, 2023 – Decided March 24, 2023

Before Judges Gilson and Gummer.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Indictment No. 16-03-0421.

Joseph E. Krakora, Public Defender, attorney for appellant (Monique Moyse, Designated Counsel, on the brief).

Esther Suarez, Hudson County Prosecutor, attorney for respondent (Stephanie Davis Elson, Assistant Prosecutor, on the brief).

PER CURIAM

Defendant Hanif Hopson appeals the denial of his post-conviction relief (PCR) petition without an evidentiary hearing. Perceiving no abuse of discretion in Judge Mitzy Galis-Menendez's decision not to conduct an evidentiary hearing and agreeing with her finding that defendant did not establish a prima facie case of ineffective assistance of counsel, we affirm.

In 2016, a jury found defendant guilty of committing second-degree certain persons not to have a weapon, N.J.S.A. 2C:39-7(b). A judge sentenced him to fifteen-years imprisonment and seven and a half years of parole ineligibility. On direct appeal, we affirmed his conviction and sentence. State v. Hopson, No. A-4678-15 (App. Div. Oct. 3, 2017). The Supreme Court denied defendant's petition for certification. State v. Hopson, 232 N.J. 485 (2018).

Defendant filed pro se a PCR petition, PCR counsel filed a supporting brief, and defendant filed a supplemental brief. The PCR judge denied his petition after hearing argument. Defendant appealed. We affirmed the denial of the PCR in all respects except one. Because the judge had not commented on defendant's argument that his trial counsel was ineffective in that he failed to secure discovery or subpoena witnesses, we remanded the matter for a determination of those issues. State v. Hopson, No. A-3515-18 (App. Div. Nov.

20, 2020). After hearing argument, Judge Galis-Menendez denied defendant's PCR petition in a written opinion and corresponding order.

Defendant raises the following argument in this appeal:

[DEFENDANT] IS ENTITLED TO AN EVIDENTIARY HEARING ON HIS CLAIM THAT HIS TRIAL ATTORNEY RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL BY FAILING TO SECURE COMPLETE DISCOVERY AND SUBPOEANA WITNESSES.

We review the PCR court's legal and factual determinations de novo because it rendered its decision without an evidentiary hearing. State v. Harris, 181 N.J. 391, 419 (2004); State v. Aburoumi, 464 N.J. Super. 326, 338-39 (App. Div. 2020). As directed by our Supreme Court, we "view the facts in the light most favorable to the defendant." State v. Jones, 219 N.J. 298, 311 (2014); see also State v. Pak L. Chau, 473 N.J. Super. 430, 443 n.7 (App. Div. 2022).

When a defendant claims ineffective assistance of counsel as the basis for relief, he must satisfy the two-pronged test formulated in Strickland v. Washington, 466 U.S. 668, 687 (1984), which was adopted by our Court in State v. Fritz, 105 N.J. 42, 58 (1987). "First, the defendant must show that counsel's performance was deficient Second, the defendant must show that the deficient performance prejudiced the defense." Strickland, 466 U.S. at 687. Bare assertions are "insufficient to support a prima facie case of

ineffectiveness." State v. Blake, 444 N.J. Super. 285, 299 (App. Div. 2016) (quoting State v. Cummings, 321 N.J. Super. 154, 171 (App. Div. 1999)).

A petitioner is not automatically entitled to an evidentiary hearing. State v. Porter, 216 N.J. 343, 355 (2013); see also State v. Peoples, 446 N.J. Super. 245, 254 (App. Div. 2016) (holding "[t]he mere raising of a claim of [ineffective assistance of counsel] does not entitle the defendant to an evidentiary hearing"). We review under an abuse-of-discretion standard the PCR court's decision to proceed without an evidentiary hearing. State v. L.G.-M., 462 N.J. Super. 357, 365 (App. Div. 2020). Rule 3:22-10(b) provides a court should hold an evidentiary hearing on a PCR petition only if the defendant establishes a prima facie case in support of PCR, "there are material issues of disputed fact that cannot be resolved by reference to the existing record," and "an evidentiary hearing is necessary to resolve the claims for relief." See also Porter, 216 N.J. at 354. "A prima facie case is established when a defendant demonstrates 'a reasonable likelihood that his or her claim, viewing the facts alleged in the light most favorable to the defendant, will ultimately succeed on the merits.'" Id. at 355 (quoting R. 3:22-10(b)).

We affirm the order denying defendant's PCR petition substantially for the reasons set forth in Judge Galis-Menendez's comprehensive, written

decision. Defendant argues the judge erred in not conducting an evidentiary hearing regarding his trial counsel's failure to obtain a copy or transcript of the 911 call that prompted police to go to defendant's location. Defendant makes that argument even though it was undisputed a recording of the call had not been preserved, a fact defense counsel elicited from the State's witness during his cross-examination of her and relied on in his summation. Moreover, as Judge Galis-Menendez correctly found, the 911 call was "of no moment" because the actions that resulted in defendant's arrest occurred after the call when police arrived at the scene.

Defendant also argues the judge erred in not conducting an evidentiary hearing regarding his trial counsel's failure to subpoena the police officers who had found the weapon and arrested defendant. As Judge Galis-Menendez found, defendant did not specify the testimony those officers likely would have given that potentially could have changed the outcome of the trial. Defendant's bald assertions that their testimony "could only have supported a finding of reasonable doubt" and that defense counsel could have used their testimony to "exploit[] the inconsistencies and contradictions of other testifying officers" is not enough to establish a prima facie case of ineffective assistance of counsel.

We discern no abuse of discretion in Judge Galis-Menendez's decision to forego an evidentiary hearing. Given that defendant had failed to establish a prima facie showing of ineffective assistance of counsel or any other basis to support the holding of a hearing, Judge Galis-Menendez correctly held he was not entitled to an evidentiary hearing.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



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